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Dec. Dig., § 383.* 2 Va.-W. Va. Enc. Dig. 46; 2 Va.-W. Va. Enc. Dig. 382.]

2. Carriers (§ 13*)—Charges—Rates of Freight.—Under the direct provisions of Code 1904, § 1294c, cl. 7, it is unlawful, after the freight rate of a railroad company has been authorized and published by the State Corporation Commission, for any person, by contract or other device, to obtain transportation at a less rate, and any contract for such reduced transportation is void.

[Ed. Note.—For other cases, see Carriers, Cent. Dig., §§ 21-24; Dec. Dig., § 13.*]

3. Carriers (§ 12*)—Charges Leases—Registration.—While Code 1904, § 1294d, cl. 56, requires everyone operating a railroad under a contract or lease to file the same in the office of the State Corporation Commission, the object is only to furnish the commission with information of the lease and its contents; and if the commission treats the filing of a verified copy as a sufficient compliance with the statute, a freight rate established in favor of the lessee should not be declared invalid because there was not a strict compliance with the statute.

[Ed. Note.—For other cases, see Carriers, Dec. Dig., § 12.* 2 Va.-W. Va. Enc. Dig. 691.]

Error to Circuit Court, Wise County.

Action by the Carolina, Clinchfield & Ohio Railway against the Clinch Valley Lumber Company. There was judgment for defendant, and plaintiff brings error. Reversed and remanded.

Bond & Bruce, for plaintiff in error.

Vicars & Peery, for defendant in error.

HURT & HURT *v.* BLANKENSHIP et al.
(two cases).

Sept. 14, 1911.

[72 S. E. 117.]

1. Judgment (§ 393*)—Vacation—Sufficiency of Evidence—Infancy.—Evidence on a motion to set aside a judgment on the ground of the judgment debtor's infancy when it was rendered held not to show, when considered as on demurrer thereto, that he was an infant when the judgment was rendered or the note on which it was based was executed.

[Ed. Note.—For other cases, see Judgment, Dec. Dig., § 393.* Va.-W. Va. Enc. Dig. 497 et seq.]

2. Judgment (§ 393*)—Vacation—Infancy—Burden of Proof.—The burden of proof is upon one seeking to vacate a judgment against

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

him on the ground of infancy when it was rendered to show his infancy by clear and satisfactory proof.

[Ed. Note.—For other cases, see Judgment, Dec. Dig., § 393.* 7 Va.-W. Va. Enc. Dig. 497 et seq.]

Appeal from Circuit Court, Tazwell County.

Action by Hurt & Hurt against Harman Blankenship and another, and suit by Hurt & Hurt against Harman Blankenship and another. From an order in the legal action vacating judgment rendered therein, plaintiffs appeal; and from a decree dismissing a petition for subrogation in the chancery suit an appeal was taken. Reversed.

J. Powell Royal and S. D. May, for appellants.

Henson & Bowen, for appellee.

SMITH v. SMITH.

Sept. 14, 1911.

[72 S. E. 119.]

1. Wills (§§ 548, 597*)—Construction—Estates Created—Fee Simple.—Testator directed that all his real estate be equally divided between his three sons, and that, if one or more should die leaving no issue, their share should fall back to the survivor, and they “to pay unto my four daughters hereinafter named the sum of \$100 to be paid twelve months after the death of my wife.” Held, that the three sons took a fee-simple estate with an additional limitation over, that, if any of them should die leaving no issue, his or their share should go to his or their surviving brothers or brother, and that the estate of the last surviving brother, if he should die leaving no issue, would not be defeated and go to his sisters, but would vest absolutely in him; there being no gift over.

[Ed. Note.—For other cases, see Wills, Dec. Dig., §§ 548, 597.* 13 Va.-W. Va. Enc. Dig. 826.]

2. Deeds (§ 8*)—Property Subject to Conveyance—Contingent Interests.—Under Code 1904, § 2418, which provides that any interest in real estate may be disposed of by deed, that an estate may be made to commence in futuro by deed, and that any estate which would be good as an executory devise or bequest is good if created by deed, devisees of fee-simple estates, with an additional limitation over that, if one or more of them should die leaving no issue, his or their share, as the case might be, should go to the surviving devisees or devisee, have the right to convey all their title in the lands devised, both present and contingent.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., § 16; Dec. Dig., § 8.* 4 Va.-W. Va. Enc. Dig. 419 et seq.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.